

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Milwaukee, Wisconsin

**ALDERWOODS WISCONSIN, INC., d/b/a
ARLINGTON PARK CEMETERY,¹**

Employer

and

Case 30-RC-6466

**TEAMSTERS LOCAL UNION NO. 344, SALES & SERVICE
INDUSTRY, AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION³

This is my determination as to whether the Union's petitioned-for unit of all full-time and regular part-time family service counselors is an appropriate unit.

The Employer asserts the only appropriate unit includes all employees employed at the Employer's facility.⁴ Supporting its position, the Employer argues there is a community of interest between the family service counselors, assistant administrators, the location administrator, grounds employees, maintenance employee, and grounds superintendent.

Conversely, the Union asserts that a unit consisting of only family service counselors is appropriate because they lack a sufficient community of interest with all other employees. I find both parties ultimate position unpersuasive.

¹The name of the Employer appears as amended at hearing.

²The name of the Petitioner appears as amended at hearing.

³ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

⁴ Both parties agreed that guards and supervisors as defined in the Act should be excluded from the Unit.

Contrary to the Employer's argument, the record demonstrates significant differences between the family service counselors and grounds employees. The two groups have distinct job responsibilities, have little integration, interaction, or interchange and work in different locations. *Overnite Transportation Co.*, 322 NLRB 723, 724 (1996), quoting *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). Therefore, a unit excluding grounds employees is appropriate. However, the same is not true for administrative assistants.

Family service counselors and administrative assistants work in close proximity to each other, their positions are highly integrated, and there is interchange of employees, such that, a unit comprised solely of family services counselors would be inappropriate. I therefore find the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:⁵

All full-time and regular part-time family service counselors and administration employees; excluding grounds employees, guards and supervisors as defined in the Act.

The inclusion of the administration employees brings into question the supervisory status of Location Administrator Laura Dragolovich (Dragolovich). The record reflects she directs the work of the administrative assistants on a daily basis and her input is important in the evaluation process. Further, her position requires some college or technical school diploma and she earns approximately \$3 an hour more than other assistant administrators. The record, however, was insufficiently developed regarding the full range of her responsibilities. As such, I determine that Dragolovich will be allowed to vote, subject to challenge.

⁵ I find it unnecessary to reach the issue of supervisory status of Dan Termaat since grounds employees will not be included in the Unit.

DISCUSSION⁶

I. Introduction

The issue in this case is whether or not the Union's proposed unit of family service counselors, but not grounds or administrative assistants, is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.⁷

The Board considers the desires of the petitioning labor organization when assessing whether a petitioned for unit is appropriate, however, its desire is not controlling. *See Overnite Transportation Co.*, 322 NLRB 347, 350 (1996), citing *Marks Oxygen Co.*, 147 NLRB 228 (1964). The Board has no authority to approve a unit based solely on the extent of union organization. *See* 29 U.S.C. Section 159(c)(5); *John Sundwall & Co.*, 149 NLRB 1022 (1964); *New England Power Co.*, 120 NLRB 666 (1958). If the petitioned-for unit is not appropriate, the Board may examine other units suggested by the parties or select a different appropriate unit. *See Overnite Transportation Co.*, 331 NLRB 662, 663 (2001), citing *NLRB v. Lake County Assn. For the Retarded*, 128 F.3rd 1181, 1185 fn. 2 (7th Cir. 1997); *State Farm Mutual Automobile Insurance Co. v. NLRB*, 411 F.2d 356, 358, 360-361 (7th Cir. 1969) (en banc), cert. denied 396 U.S. 932 (1969). Ultimately, the determination of an appropriate unit will turn on whether the employees share a sufficient community of interest to be included together in the unit for representational purposes. *See Home Depot USA, Inc.*, 331 NLRB 1289 (2000), citing *Overnite*

⁶ The Employer and Petitioner filed post-hearing briefs that were duly considered. The hearing officer's rulings made at the hearing were free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case. The Petitioner, a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

⁷ Unless otherwise noted, for ease of reference, grounds employees will include grounds keeper(s), maintenance employee(s) and grounds superintendent. Further, unless otherwise noted, administration employees, will include the location administrator and assistant administrators.

Transportation Co., 322 NLRB 723, 724 (1996). In determining whether employees share a sufficient community of interest to constitute an appropriate unit, the Board weighs various factors including:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications; training and skills; differences in job functions and amount of working time spent away from employment or plant situs . . . the infrequency or lack of integration with the work functions of other employees or interchange with them; and history of bargaining.

Overnite Transportation Co., 322 NLRB 723, 724 (1996), quoting *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

An examination of the following factors, considered in *Overnite*, establishes a community of interest between family service counselors and administrative assistants, but not grounds employees: job responsibilities, supervision, proximity, integration, interaction, interchange of employees, benefits and policies, hours, qualifications and wages. 322 NLRB 723, 724 (1996).

II. Facts

Arlington Park (Employer) owns and operates a cemetery located in Greenfield, Wisconsin. It is primarily engaged in the sale of pre-need (those purchasing property and/or product prior to death) and at-need (those who have just suffered a loss) burial arrangements.

On the cemetery's 95 acres, the Employer maintains three buildings, the Consumer Center, the Service Building and the Arlington House. Family service counselors and administrative assistants primarily work out of the Consumer Center, the main office for the cemetery. Along with their work at the Consumer Center, the family service counselors also staff the Arlington House, the building formerly housing the main office. Grounds employees primarily work out of the Service Building.

A. Job Responsibilities

The Employer's operation is comprised of three departments: Family Service Counselors (sales); Administration; and Grounds employees.⁸ The Employer currently employs two family service counselors, four administration employees (three assistant administrators and one location administrator) and five grounds employees (three groundskeepers, one mechanical/grounds employee and one grounds superintendent).

Family service counselors are mainly responsible for providing service to customers from start to finish when there has been a death. This includes selling property and services, assisting customers with inquiries, complaints and service requests, completing sales contracts and attending funerals and burials. Their duties further include scheduled "on-duty" hours, in which they answer phones and meet people coming in to the Consumer Center and Arlington House.

Administration employees generally provide administrative and clerical support for the Employer. They meet and greet the public, answer phones and provide information. For many of their duties they work in conjunction with the family service counselors, by reviewing and processing their contracts, answering insurance questions, maintaining customer information, ordering products, controlling inventory, and processing and maintaining customer accounts.

Al Scharhag, under the assistant administrator classification, has unique duties. He is primarily responsible for meeting funeral processions at the cemetery and assisting the family to the gravesite. In addition to his primary duty, Scharghag answers telephones in the Consumer Center when other employees are busy.

⁸ The organization chart establishes three departments into which employees can be categorized.

Grounds and maintenance employees are responsible for maintaining the grounds and buildings and assisting in burials. Additionally, grounds employees deal with customer complaints if the customer approaches them on the cemetery grounds.

B. Supervision

Family service counselors are supervised by on-site Family Service Manager Penny Ricchio (Ricchio). Ricchio recruits, interviews, hires trains and supervises family service counselors. She further promotes sales, and makes sure the burial procedures go smoothly. Ricchio is supervised by Market Sales Manager Vaughn Giwa (Giwa), located in Ohio. Giwa is in charge of the Cleveland, South Bend, Indiana and Milwaukee markets. Giwa reports to Market General Manager Tim Stanley (Stanley). Neither Ricchio nor Giwa have supervisory authority over administration or grounds employees.

Based on the organizational chart the administrative assistants are directly supervised by the Location Administrator, Dragolovich. Dragolovich reports to Market Administrator Madison/Milwaukee, Cindy Douglas (Douglas), whose office is located in Janesville, Wisconsin.⁹ Douglas reports to Clyde Rupnow (Rupnow). Rupnow testified he is responsible for disciplining and evaluating administrative assistants. Rupnow maintains an office in Ixonia, Wisconsin, approximately 42 miles from the cemetery and is at Arlington Park one or two days a week. Rupnow reports to Stanley.

Based on the organizational chart the grounds employees are directly supervised by the Superintendent, Dan Termaat (Termaat).¹⁰ Termaat reports to Maintenance/Repairs, John Konop

⁹ While the record does not reflect the distance between Milwaukee and Janesville, Wisconsin. I take notice that the distance is approximately 84 miles, based on a city to city distance finder on www.mapquest.com.

¹⁰ As previously stated, it is unnecessary to determine the supervisory status of Termaat. While supervisory status for Termaat is not at issue, the record reflects Termaat has hired, gives employees daily duties they are required to

(Konop), who works on-site at Arlington Park. Konop reports to Rupnow. Rupnow testified that he is responsible for interviewing, hiring, directing work, evaluating performance and disciplining grounds employees.

Rupnow has some supervisory responsibilities over all employees at Arlington. He approves the payroll and maintains employees' records, such as applications, driver's licenses and social security card.

C. Proximity

Family service counselors work in close proximity to assistant administrators. Family service counselors spend their time primarily at the Consumer Center, along with the assistant administrators.¹¹ At the Consumer Center the two groups of employees sit just five feet apart. There is constant contact between the two groups throughout the day. They utilize the same work area, break room, restroom and office equipment. They frequently spend breaks and lunches together. If somebody is going to get a lunch, they regularly offer to bring lunch back for the other family service counselors and assistant administrators.

In contrast, the grounds department is located in a separate building, the Service Building.¹² Grounds employees take breaks and eat in the service building. A majority of their work is performed on the cemetery grounds or in the Service Building. Other than performing building maintenance, grounds employees, on occasion, go to the Consumer Center for things such as picking up service requests, mail, getting information on burials and picking up products.

perform, sits in on employee interviews, has made effective recommendations for discipline and would be involved in terminations.

¹¹ Though they have the ability to conduct meetings off-site, 90% of meetings are held at the cemetery.

¹² The Service Building is approximately 100 feet from the Consumer Center.

D. Integration and Interaction

Family service counselor functions are highly integrated with assistant administrators. Family service counselors must rely on assistant administrators when selling and servicing customers.

Family service counselors consult with administration employees with questions regarding customers who want to pay off an account, processing of paperwork, availability of specific burial plots or to see if a specific product was ordered. When family service counselors finish writing a contract, they give it an assistant administrator, who reviews and approves it, before giving it to Ricchio for final approval. After Ricchio gives her final approval, the contract is returned to an assistant administrator for entry and maintenance in the computer.

In addition to assisting family service counselors, administration employees have regular contact with the customers. If the family service counselors are busy during on-duty hours, an administration employee will sit at the desk to greet people and answer the telephone. If the customer asks for a specific family service counselor or has a sales question, the assistant administrator either transfers the call to the appropriate person or takes a message. Moreover, the assistant administrators help customers with their complaints or concerns.

Administration employees additionally meet with customers when customers want to pay on an account or there is a financing mistake. Location Administrator Dragolovich may sit in on a meeting between the family service counselor and customer to notarize documents.

While family service counselors are in contact with grounds employees regarding location and preparation of burial sites, they are not in constant contact, such as with the assistant administrators.

E. Interchange of Employees

Assistant administrators regularly provide back-up for family service counselors. Assistant administrators answer the phone and greet the public when family service counselors are occupied with customers during their on-duty hours.

Additionally, Dragolovich can act as a back-up to a family service counselor in a sales situation since she is licensed to sell property and services.

Family service counselors also fill in for assistant administrators. When assistant administrator Scharhag is unavailable to lead funeral processions, a family service counselor takes his place. Neither family service counselors nor assistant administrators engage in the physical labor performed by the grounds employees.

F. Benefits and Policies

All employees receive almost identical corporate wide benefits and are subject to the same policies. The majority of the benefits and policies are established by the Employer's corporate headquarters located in Vancouver, Canada. These benefits include the same eligibility for and accrual of vacation, eligibility for holidays, sick leave, attendance and leave programs, 401(k), and insurance. Further, all employees are subject to the same policies for business travel, personal appearance, smoking, code of conduct and discipline procedures.

G. Hours

Family service counselors are scheduled for on-duty hours from 8:30 a.m. to 4:30 p.m., Monday through Friday (with extended hours until 6:00 p.m. Monday through Thursday) and

9:00 a.m. to 12:00 noon on Saturday.¹³ During their on-duty hours family service counselors are required to staff the front desk of the Consumer Center and the Arlington house.¹⁴ They greet and help people and take incoming calls. These on-duty hours rotate among the family service counselors, including Ricchio. Family service counselors are also required to work until about 6:45 p.m. on Tuesdays to make calls to potential customers.

When they are not scheduled for on-duty hours, family service counselor can schedule off-site appointments. However, because there are only two family service counselors (and Ricchio), they are likely to be regularly scheduled at the cemetery.

Assistant administrators work Monday through Friday from 8:00 a.m. to 4:00 p.m. Grounds employees work from 7:30 a.m. to 4:00 p.m., Monday through Friday and from 8:00 a.m. until 12:00 noon on Saturday.¹⁵

H. Qualifications

Family service counselors, assistant administrators and grounds employees have comparable qualifications. None of these positions require more than a high school diploma or other training prior to employment. The family service counselors are required to hold two Wisconsin licenses to sell property and services. However, there are no special qualifications necessary to obtain such licenses. The employee must merely pay a fee. In addition to the family service counselors, Location Administrator Dragolovich holds those licenses and can sell property and services.

Family service counselors receive initial sales training. Ricchio testified that Dragolovich requested that she sit in on the next family service counselor training session.¹⁶

¹³ There is also a back-up family service counselor scheduled from 10:00 a.m. to 2:00 p.m.

J. Wages

Family service counselors have a different wage structure than grounds and administration employees. At the start of their employment family service counselors receive a training wage of \$250 a week, plus commissions, for four to six weeks. After that they are paid a commission on their sales of property and product ranging from 5% to 20%, depending on the product sold.¹⁷ Family service counselors receive an hourly wage of \$5.15 an hour if their sales commissions do not exceed that wage. However, an examination of a recent pay period demonstrates the current family service counselors receive compensation comparable to other employees.¹⁸

While family service counselors receive commissions, they do not receive all of their earned commission. The Employer reserves 10% of their commission so there are funds available in the event any of the sales they made are cancelled.

When family service counselors work in excess of 40 hours a week they typically receive compensatory time, in lieu of overtime. On the rare occasions they receive overtime, they are paid at their hourly rate.

Administration and grounds employees are all paid an hourly wage and receive no commissions. Administration employees earn approximately \$10 to \$10.50 an hour.¹⁹ Grounds

¹⁴ Arlington house is staffed from about 9:00 – 9:30 a.m. to 4:00 – 4:30 p.m.

¹⁵ Their hours can run until 1:00 p.m. to 2:00 p.m. on Saturdays, if there is a burial.

¹⁶ It is noted that family service counselors also attend twice weekly sales meetings.

¹⁷ Rupnow testified the Company could change the commission percentage but he is not involved in that.

¹⁸ Ricchio testified it would not be unusual at Arlington for an experienced, hard working family service counselor to make between \$40,000 and \$60,000 a year. However, though commission sales vary from month to month, the pay period ending on July 6, 2002, demonstrated one family service counselor earned gross compensation of \$1087.69, which translates into \$10.74 an hour and the other earned gross compensation of \$652.69, which translates into \$8.82 an hour.

¹⁹ The Location Administrator earns approximately \$13.50 an hour.

employees wages range from \$10 to \$13.50 an hour.²⁰ Their wage per hour can increase based on length of service and cost of living. Neither administration nor grounds employees are subject to reservation of wages and both earn overtime at time and a half.

Finally, all employees are paid every other week on the same day.

III. Analysis

Family service counselors and assistant administrators share a substantial community of interest, such that, a unit of solely family service counselors would be inappropriate. While the grounds employees do share a community of interest to some degree with the other employees, it is not so strong as to make a unit without them inappropriate.

A. Assistant administrators

A unit comprised of only sales employees is inappropriate when other employees' functions are integral to the selling process, they share similar benefits, working conditions, common supervision and have regular contact. *Larry Faul Oldsmobile Co., Inc.*, 262 NLRB 370, 371 (1982). A unit of sales people was inappropriate when it excluded a receptionist/inventory control clerk whose duties were to answers phones, greet customers not already greeted by a salesperson, handle correspondence, maintain and answer questions about inventory records, receive new car purchase orders, and type summaries of the cars the Employer had ordered. *See id.* The receptionist/inventory control clerk was in constant contact with the sales people, enjoyed similar benefits, had common supervision and observed the same dress code. *See id.* Family service counselors and assistant administrators share precisely that relationship. Assistant

²⁰ The Grounds Superintendent earns between \$12 and \$17 an hour.

administrators greet people and answer phones when the family service counselors are not available, handle some correspondence, maintain and answer questions about inventory records, review and approve contracts. They share similar benefits, have some common supervision, work in close proximity to each other and take breaks and lunches together. Further, the Location Administrator can sell to customers. Taken together, these factors demonstrate the assistant administrators share a substantial community of interest with family service counselors so as to warrant their inclusion in the unit. *Big N Department Store No. 333*, 199 NLRB 174, 175 (1972); *Larry Faul Oldsmobile Co., Inc.*, 262 NLRB 370, 371-2 (1982), citing *Levitz Furniture Corporation*, 223 NLRB 522, 523 (1976) and *Sears, Roebuck and Co.*, 191 NLRB 398, 404-406 (1971).

While the Union argues the Board has held salesmen to have a community of interest sufficient to constitute a separate appropriate unit for collective bargaining purposes, the cases presented by the Union are distinguishable from the present case. *See L.M. Berry & Co.*, 198 NLRB 217, 219 (1972); *Merry Oldsmobile, Inc.*, 287 NLRB 847 (1987).

In *L.M. Berry & Co.*, the Board found that the Employers' 52 clericals, five who were assigned directly to the sales department, did not share a sufficient community of interest to include them in the petitioned-for unit of sales personnel. 198 NLRB 217 (1972). However, in that case, unlike the present case, there was a sales force of 41 salesmen and 22 telephone salesgirls. *See id.* While the clerical and sales employees may have had some interaction, it is entirely different from a sales force of two (or three) who, throughout each day, interact with and rely on four administration employees. The family service counselors and administration employees present a much more cohesive picture than the clericals and sales force in *L.M. Berry & Co.* *See id.* at 217-218.

In *Merry Oldsmobile, Inc.*, the Board rejected the inclusion of four office employees in a unit of salespersons and “after-sales” persons. *See* 287 NLRB 847 at 849. Unlike the present case, in *Merry Oldsmobile, Inc.*, it was undisputed that none of the clerical employees at issue worked on the showroom floor or actually participated in making a sale. *See id.* In the present case, as described above, the assistant administrators work only five feet away from the family service counselors and participate in sales process by providing information and acting as back-up for family service counselors.

Based on the foregoing, a unit of family service counselors, without administration employees, is inappropriate.

B. Grounds Employees

While the grounds employees do share some similarities with the other employees, it is not so strong as to make a unit without them inappropriate. The strength of their shared interest is diminished by the ways in which the grounds employees differ from the other employees. The grounds employees work primarily on the cemetery grounds or in the Service Building as opposed to the Consumer Center. While they do interact with other employees regarding the burial, their contact is less frequent. The grounds employees do not act as back-up for family service counselors. Neither family service counselors nor assistant administrators engage in the physical labor required of grounds employees. Further, while all other employees write out their hours worked, grounds employees use a time clock to punch in and out. Grounds employees do share with other employees some common supervision, benefits, policies, similar hours, and wage structure (with assistant administrators). However, the differences between the grounds employees and other employees is sufficient that, a unit excluding grounds employees is

appropriate. *See Overnite Transportation Co.*, 331 NLRB 662, 663 (2001). I therefore find the appropriate unit to include family service counselors and administration employees but not grounds employees. There are currently five employees in this unit (excluding Dragolovich, who is voting under challenge).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local Union No. 344, Sales & Service Industry, Affiliated with the International Brotherhood of Teamsters, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before August 9, 2002.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by August 16, 2002.**

Signed at Milwaukee, Wisconsin this 2nd day of August 2002.

/s/Philip E. Bloedorn
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Thirtieth Region
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